

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NIKITA PETTIES, *et al.*

Plaintiffs

v.

THE DISTRICT OF COLUMBIA,

Defendant

Civil Action No 95-0148 (PLF)

**DEFENDANTS' STATUS REPORT ON MOTION TO VACATE
PRELIMINARY INJUNCTION AND PAYMENT ORDERS**

Defendants' Motion to Vacate the Preliminary Injunction and the payment orders has been fully briefed and pending since May 2009, over four (4) months now. At the time the Motion to Vacate was filed and fully briefed, Defendants reported that there were no payment disputes by OSSE, the agency now charged with payment to providers.

Accordingly, it is appropriate to advise the Court that the absence and/or decline of disputes continues and to bring the record up to date so that the Court will have the most current information in deciding the pending motion.

1. DCPS and OSSE have continued to file their monthly reports with the Court on payments to providers. The record already contains the reports through April 2009. Attached are the reports since that time. The DCPS reports are Exhibit Q and the OSSE reports are Exhibit R.

Defendants reported to the Court in their Reply Memorandum in support of the Motion to Vacate that these reports showed a continuing decline in disputed invoices and

late payments by DCPS and, as of that time, no payment disputes by OSSE. The pattern of decline in disputes remains. Payments to providers, which prompted the original preliminary injunction and succeeding payment orders, are firmly under control of the two agencies charged with administering them. Thus, as defendants demonstrated in their moving papers, and as the most recent evidence demonstrates, the justification for the original preliminary injunction and the payment orders no longer exists.

2. The payment order of November 8, 2004, has now been replaced by a new Order filed August 5, 2009. (A copy is attached hereto as Exhibit S). It makes some minor changes agreed to by the parties in the November 8, 2004 order. Defendants' showing of the lack of need for the continuance of the November 8, 2004 order applies equally to the new order, which is essentially a stop gap measure until the payment portion of this case can be resolved in its entirety. It, too, should be vacated along with the original preliminary injunction. There is absolutely no continuing need or justification for this Order or for continuation of the Court's jurisdiction here.

Exhibits G and H to defendants' pending motion are the policies and procedures for payment of invoices adopted by both DCPS and OSSE. As defendants stated in their Reply Memorandum, these will remain in place if the payment order is vacated. They track the procedures of the new order as well as the November 8, 2004 order and provide "a clear and binding roadmap for the continued administration of the payment system" (Defendants' Memorandum at 20), and "the reforms of the payment process effectuated over the years by this Court in its various payment orders survive in both the OSSE and DCPS written policies and procedures." (Defendants' Memorandum at 23). Thus, there is no danger of backsliding or return to the problems which led to the original preliminary

injunction and subsequent payment orders. The measures that defendants have implemented are durable.

As defendants also advised the Court and the plaintiffs in their Reply Memorandum, they have reached an agreement in principle for the development of an alternative dispute resolution mechanism for future payment disputes with the Chief Judge of the Office of Administrative Hearings (“OAH”). It would substitute the OAH in the resolution of future payment disputes. Since some dispute mechanism will still be necessary to resolve payment disputes, this will establish the predicate for closure of the payment portion of this case.

The most recent evidence submitted with this status report demonstrates that the payment process for vendors is well under control and timely by the two District agencies – DCPS and the OSSE – charged with the process. This most recent evidence, in addition to that submitted by defendants in support of the pending motion, are more than sufficient grounds for vacating the preliminary injunction and associated payment orders in this matter and returning control to the executive branch of the District of Columbia government.

Respectfully submitted,

PETER J. NICKLES
Attorney General of the
District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General
Civil Litigation Division

ELLEN EFROS
Chief, Equity 1 Section I

/s/ Daniel A. Rezneck
DANIEL A. REZNECK [#31625]
Senior Assistant Attorney General
441 Fourth Street, N.W., 6th Fl. South
Washington, D.C. 20001
202-724-5691
Daniel.Rezneck@dc.gov

Dated: October 14, 2009